

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No.: 05-10448-GAO

JOANNE M. ROYER,	)
	)
Plaintiff,	)
	)
v.	)
	)
BLUE CROSS BLUE SHIELD	)
OF MASSACHUSETTS, INC., BLUE	)
CROSS BLUE SHIELD OF	)
MASSACHUSETTS, INC. OMNIBUS	)
WELFARE BENEFIT PLAN and BLUE	)
CROSS BLUE SHIELD LONG TERM	)
DISABILITY BENEFIT PLAN,	)
	)
Defendants.	)
	)

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE  
AMENDED/SUPPLEMENTARY MOTION FOR SUMMARY JUDGMENT**

Defendants Blue Cross and Blue Shield of Massachusetts, Inc., Blue Cross and Blue Shield of Massachusetts, Inc. Omnibus Welfare Benefit Plan and Blue Cross Blue Shield Long Term Disability Benefit Plan ("Defendants") oppose Plaintiff's Motion For Leave To File Amended/Supplementary Motion For Summary Judgment, filed by plaintiff JoAnne Royer ("Royer") on February 17, 2006.

Ms. Royer's Motion For Summary Judgment, which Defendants have opposed, should be considered and decided – as filed – at the time the Court deems appropriate. Ms. Royer argues only that she made a mistake about the deadline for filing, and she does not either suggest any

purpose or need to amend the substance of her motion or offer the Court any reason why she should be allowed to try again. It would be unfair to allow Ms. Royer to file a revised motion for summary judgment now that she has had the benefit of reading Defendants' Opposition to her motion, and she has already filed a Reply (Document 51) to Defendants' Opposition. The purpose of filing a motion with the Court is not to provide an opportunity for counsel to educate himself about the weaknesses of his arguments so that he can make them again in an improved version filed at a later date.

The Court should be aware that, contrary to the assertion in Ms. Royer's current motion, the Court has not set April 4 as the deadline for filing summary judgment motions. That was the date proposed by the parties in their Joint Statement, but the Court did not adopt this proposal. At the Scheduling Conference, the Court did not set any schedule for further proceedings, but rather indicated that it would set a schedule only after consideration of the motions to dismiss and the filing of the Administrative Record. Those events have now occurred.

It would now be appropriate for the Court, with or without another scheduling conference, to issue an order scheduling further proceedings in this matter. Whether the Court chooses to consider and decide Ms. Royer's Motion For Summary Judgment now or defers consideration of that Motion until the Court has before it cross-motions for summary judgment from all parties – which it could then consider simultaneously – is a matter that the Court should decide in its discretion. Defendants respectfully suggest that it would make sense simply to hold Ms. Royer's summary judgment, as filed, for consideration at a later moment.

Defendants suggest that the Court adopt and adjust, as it deems appropriate, the sequences of events and dates set out in the parties' Joint Statement Pursuant To Local Rule 16.1(D), filed November 15, 2005. Defendants, for their part, would prefer that the deadline for

filing their motions for summary judgment, without any need for discovery, be set at May 1, 2006, with oppositions to such motions no later than May 26, 2006, and reply briefs no later than June 9, 2006. However, Defendants are prepared to comply with any date the Court may set.

**Conclusion**

For the foregoing reasons, the Court should deny Ms. Royer's motion for leave to file an amended or supplementary motion for summary judgment.

BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS, INC. and BLUE CROSS  
BLUE SHIELD OF MASSACHUSETTS, INC.  
OMNIBUS WELFARE BENEFIT PLAN  
By their attorneys,

/s/ Joseph Halpern  
Joseph D. Halpern, BBO #544789  
Blue Cross and Blue Shield of  
Massachusetts, Inc.  
Landmark Center, 401 Park Drive  
Boston, MA 02115  
(617-246-3500)  
joseph.halpern@bcbsma.com

BLUE CROSS BLUE SHIELD LONG-TERM  
DISABILITY BENEFIT PLAN  
By its attorneys,

/s/ Edward S. Rooney, Jr.  
Edward S. Rooney, Jr., BBO No. 426840  
ECKERT SEAMANS CHERIN  
& MELLOTT, LLC  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110  
(617) 342-6800

David F. Schmidt  
CHITTENDEN, MURDAY & NOVOTNY LLC  
303 West Madison Street, Suite 1400  
Chicago, IL 60606  
312-281-3600